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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Edward J Gladney,

10 Plaintiff,

11 v.

12 JT Shartle, et al.,

13 Defendants.
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No. CV-17-00427-TUC-DCB

ORDER

15 The Court has reviewed the Plaintiff's Motion to Compel and Defendants'
16 Objections. The Court finds that the Plaintiff's discovery requests are relevant to the case:
17 whether Defendants' duty of care fell below the standard of care for protecting inmates in
18 their custody. Plaintiff alleges that Defendants failed to provide adequate monitoring of an
19 out-of-bounds inmate and failed to adequately staff the housing unit with at least two
20 officers resulting in an out-of-bounds inmate, not assigned to Plaintiff's housing unit,
21 entering and sexually assaulting the Plaintiff. (Second Amended Complaint (Doc. 10) at
22 15 ¶ 3.) The Court finds that Defendant shall file the documents they identified as being
23 possibly responsive to Requests for Production 1,¹ 6 and 8 with the Court for *en camera*
24 review. The Court will consider the security and privacy issues on *en camera* review.
25 Request for Production 7 has been withdrawn. Defendant has answered Interrogatory 3:
26 "How did inmate Terrell Powell gain access to B-2 Unit at USP Tucson on May 19, 2016,
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28 ¹ Institution Supplement 5500.14B, Inmate Accountability, and Post Orders for May 19, 2016.

1 between the hours of 9:01 am -10:05 a.m.?” They do not know and do not have a recording
2 of his entry to the Unit.

3 The Plaintiff also seeks appointment of counsel and appointment of an expert in
4 sexual trauma/psychological profession to testify regarding the effects of physical sexual
5 trauma. He seeks an extension of the deadline for disclosing his expert until the Court rules
6 on the latter request. The Defendants do not object to the extension of time for disclosing
7 experts.

8 There is no constitutional right to the appointment of counsel in a civil case. *See,*
9 *Ivey v. Board of Regents of University of Alaska*, 673 F.2d 266, 269 (9th Cir. 1982); *Randall*
10 *v. Wyrick*, 642 F.2d 304, 307 n. 6 (8th Cir. 1981). The appointment of counsel in a civil
11 rights case is required only when exceptional circumstances are present. *Aldabe v. Aldabe*,
12 616 F.2d 1089, 1093 (9th Cir. 1980); *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir.
13 1986). A determination with respect to exceptional circumstances requires an evaluation
14 of the likelihood of success on the merits as well as the ability of a plaintiff to articulate his
15 claims *pro se* given the complexity of the legal issues involved. *Wilborn*, 789 F.2d at 1331
16 (9th Cir. 1986). Having considered both elements, it does not presently appear that
17 exceptional circumstances exist that would require the appointment of counsel.

18 Likewise, the Court finds that it will extend the time for disclosing what appears to
19 be a damage expert until such a time as liability is established. The Court anticipates that
20 Defendants will seek a motion for summary judgment at least under the discretionary-
21 function exception to liability under the FTCA. Thereafter, the Plaintiff may re-urge his
22 request for appointment of a damage expert.

23 **Accordingly,**

24 **IT IS ORDERED** that the Motion to Compel (Doc. 41) is DENIED IN PART AND
25 GRANTED IN PART.

26 **IT IS FURTHER ORDERED** that within 14 days of the filing date of this Order,
27 the Defendant shall file the responsive productions described above with the Court *en*
28 *camera*.


1 **IT IS FURTHER ORDERED** that the Motion for Appointment of Counsel (Doc.
2 43) is DENIED, without prejudice to it being re-urged following dispositive motions.

3 **IT IS FURTHER ORDERED** that the Motion for Appointment of Expert Witness
4 in the sexual trauma/psychological profession (Damage Expert) (Doc. 42) is DENIED,
5 without prejudice to it being re-urged following dispositive motions.

6 **IT IS FURTHER ORDERED** that the Motion for Extension of Time for
7 Disclosure of Expert Witnesses (Doc. 47) is GRANTED only for damage experts. The
8 deadline for disclosing all other experts has past, November 20, 2018.

9 Dated this 19th day of December, 2018.

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Honorable David C. Bury
United States District Judge